RESERVED

Civil Miscellaneous Writ Petition No. 828(S/S) of 2001

Raj Kumar ……. Petitioner

Versus

1. State of Uttaranchal, and
2. Basic Shiksha Adhikari, Almora ……. Respondents.

Hon'ble A.A. Desai, C.J.
Hon'ble Irshad Hussain, J.

(Delivered by Hon'ble Irshad Hussain, J.)

Heard Sri M.C. Kandpal, counsel for the petitioner, learned C.S.C. and Sri Paresh Tripathi, counsel for the respondent No. 2.

In the aforesaid writ petition, a miscellaneous application was filed with the prayer that the writ petition may be dismissed as not pressed. Science the move was opposed on behalf of the respondents, the case was listed on 14.6.2002 for order. On this dated the respondents filed rejoinder affidavit wherein it was urged that since the petitioner had filed fabricated documents to make out a ground for filing the writ petition to reiterate his claim for appointment under dying in harness rules, the writ petition deserves to be dismissed with exemplary costs since the ground therefore was palpably false.

The petitioner had filed civil Miscellaneous writ petition no. 2367 of 1999 in the High Court of Judicature at Allahabad with a prayer that the respondents be directed by means of a writ of mandamus to give appointment on compassionate ground under the dying in harness rules on account of death of his mother Smt. Prema Tiwari who was employed as a teacher. The writ petition was, at the stage of admission, dispose of finally by directing the respondent no. 2 to consider, decide and dispose of the petitioner's representation in accordance with law within the stipulated period. Pursuant to the directions, the competent authority by

impugned order dated 17.5.1999 rejected the representation of the petitioner by a reasoned order observing that the petitioner is not the son of the deceased Smt. Prema Tiwari. One of the main reasons of the rejection of the representation was that the petitioner had filed his High School Certificate wherein his date of birth is mentioned as 30.16.1977. The record of the school revealed that after summer vacation Smt. Prema Tiwari resumed her duties on 1.7.1977 and remained present on duty for the entire month of July and did not avail a single day of ordinary or maternity leave in the said month. The claim of the petitioner thus conclusively stands falsified that Smt. Prema Tiwari did give birth to a son on 30.6.1977. Other investigation and material collected by the competent authority also reveal that Smt. Prema Tiwari was issueless and the father of the petitioner had another wife from whom he was blessed with children including the petitioner.

The petitioner aggrieved by the said order dated 17.5.1999 filed the present writ petition and wanted to have the same quashed with further direction to the respondent no.2 to consider his claim for appointment on compassionate ground sympathetically under the relevant rules. The petitioner has in the present petition now taken a new stand that, in fact actual date of birth in 3.10.1976 as is evident by birth certificate annexure 7 and further that he had been granted succession certificate by a competent court in respect of debts of his mother Smt. Prema Tiwari and thus the impugned order was not passed on valid grounds. Considering the assertion, respondent no. 2 was by order dated 24.5.2002 directed to appear in person and to file personal affidavit as to what was the basis to reject the representation of the petition that the petitioner is not the son of deceased Smt. Prema Tiwari. The affidavit filed by the respondent no. 2 as well as the documents filed by the petitioner himself reveal that the petitioner obtained the birth certificate after passing of the impugned order and by seeking registration of his birth showing his date of birth as 3.10.1976,. The application to this effect was moved on 28.3.2002 as indicated in annexure 7 and this itself indicates that after the impugned order dated

17.5.1999, the petitioner got obtained this false birth certificate showing his date of birth as 3.10.1976 contrary to 30.6.1977 recorded in the High School certificate. It is thus evident that the disputed birth certificate was procured by the petitioner with a view to make a claim on the basis of said certificate for his appointment on compassionate ground despite rejection of his representation on valid grounds. There can also be no doubt that the petition has made false averment to this effect in his affidavit knowing well that the date of birth shown in the High School certificate is the actual date of birth and the same can legally be taken to be correct date of birth of the person concerned. The petitioner has thus fabricated the document of ruse in judicial proceedings to support his false claim. The case of the petitioner is one, which falls under the category of perjury, and fabrication of the documents for use in judicial proceedings and the petitioner, therefore, is liable to be dealt with for the wrongful act. To avert the serious consequence, the petitioner filed the instant application.

In the peculiar circumstances of the case, however, in the first instance instead of making a complaint u/s 340 Cr. P.C. for committing perjury, it is expedient in the interest of justice to dismiss the petition with exemplary costs for his wrong doing.

The petition is accordingly dismissed with Rs. 5000/-(five thousands) as costs to be deposited within 15 days. In case of failure, proceedings be initiated.

(A.A. Desai, C.J.)(Irshad Hussain J.)

Dt. August 19,2002
MPS